

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:

Circuit City Stores, Inc. et al.,) Chapter 11
Debtors.) Case No. 08-35653 (KRH)
) Jointly Administered
) **Hearing Date/Time: October 7, 2009**
) **2:00p.m. (Eastern Time)**

**CREDITOR CITY OF CHESAPEAKE TREASURER'S OFFICE RESPONSE TO
DEBTORS' THIRTY-SEVENTH OMNIBUS OBJECTION TO CLAIMS (REDUCTION
OF CERTAIN PERSONAL PROPERTY CLAIMS)**

I. INTRODUCTION

Creditor City of Chesapeake Treasurer's Office (City of Chesapeake) files this response to Debtors' Thirty-Seventh Omnibus Objection to Claims (Reduction of Certain Personal Property Tax Claims) (the "Objection"), which was filed on August 24, 2009. The Debtors' objection to City of Chesapeake's claim is without merit, and the Court should allow the claim as filed. The amount of the claim is presumed correct; and the Debtors' generic and factually unsupported objections are insufficient to overcome that presumption.

II. BACKGROUND

The City of Chesapeake is an independent municipal corporation and political subdivision of the Commonwealth of Virginia. As part of its governmental function and in accordance with Title 58.1 of the Code of Virginia, 1950, the City of Chesapeake assesses and collects ad valorem personal property taxes.

1 The Debtors operated two stores within Chesapeake City limits located at 4107
2 Portsmouth Boulevard and 1589 Crossways Boulevard. In accordance with Virginia law ad
3 valorem property taxes were assessed in the amount of \$16,622.33 against the Debtors' personal
4 property located in those stores. These taxes are reflected in City of Chesapeake's Proof of Claim
5 No. 118742 filed with this court on March 20, 2009.

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7 The Debtors ask this Court to determine the assessed value of their personal property
8 under 11 U.S.C. §505, seeking to reduce the amount of the City of Chesapeake's claim to
9 \$5,255.04.
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11 **III. ARGUMENT**
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13 A proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes
14 *prima facie* evidence of the validity and the amount of the claim. BR 3001(f). In addition, under
15 state law for judicial review of assessments, the burden is on the taxpayer to prove the
16 erroneousness of the assessment. VA. CODE ANN. §58.1-3984 (1950). The taxpayer must also
17 pass the court's test as to whether the error was caused by the taxpayer's willful failure or refusal
18 to furnish the necessary information to the assessing authority, as required by law. VA. CODE
19 ANN. 58.1-3987 (1950).

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21 Therefore, for this Court to order that the amount the City of Chesapeake's claim be
22 reduced the Debtors must demonstrate that the claim amount is incorrect, that their asserted
23 amount is correct and that they did not willfully fail or refuse to provide this correct assessment
24 to the proper authorities.
25

26 The Debtors offer no admissible evidence in support of their asserted "correct" claim
27 amount or the Objection in its entirety (i.e. declaration of expert or property valuation reports).
28 The Debtor simply asserts that the "Claims are overstated in amount given the value of the

1 personal property that is the subject of the personal property taxes.” Objection at 6. The
2 Objection apparently applies equally and to all claims to which the Debtor objects failing to
3 account for the particular taxing and valuation methodologies of each of the taxing authorities.
4

5 If the Debtors had a good faith belief that the personal property taxes assessed by the City
6 of Chesapeake were based on an erroneous assessment, they could have filed an administrative
7 appeal with the City of Chesapeake Commissioner of Revenue and further with the Virginia Tax
8 Commissioner if necessary. VA. CODE ANN. 58.1-3983.1 (1950). The Debtors have not provided
9 an documentation to any taxing authority or this Court to prove an erroneous assessment.
10

11 The Debtors have not met the burden of proving that their tax liability accounting is
12 correct or overcome the *prima facie* validity the City of Chesapeake’s tax claim. In fairness to
13 other city tax payers, the Debtors should not be allowed to reduce their tax liability by asserting
14 conclusory statements without factual support.

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16 **IV. CONCLUSION**

17 For the reasons stated above, the Court should overrule the Debtors’ objection to the City
18 of Chesapeake’s claim and allow the claim as filed.

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20 **CITY OF CHESAPEAKE TREASURER’S OFFICE**

21
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